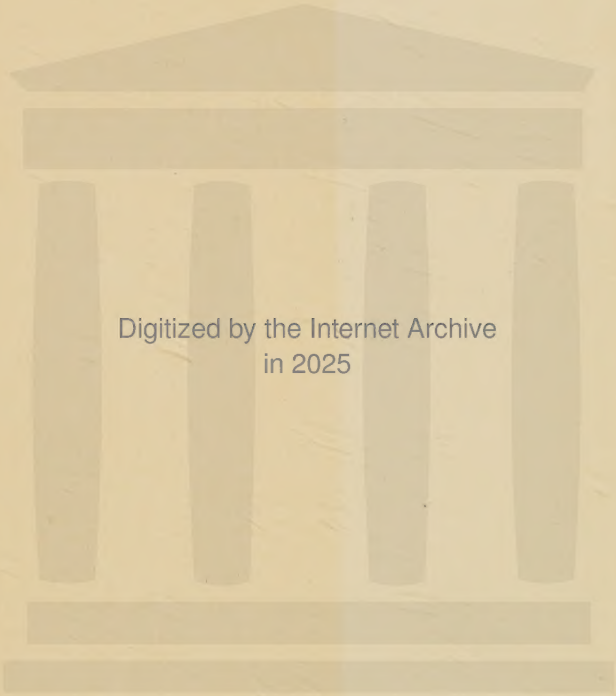
ARBITRATION AND THE HAGUE COURT

JOHN W. FOSTER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ARBITRATION
AND
THE HAGUE COURT

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BY
JOHN W. FOSTER
President of the National Arbitration Conference

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THIS monograph has been prepared in response to a resolution of the Mohonk Arbitration Conference, asking the writer to present to the public the present phases of the subject of arbitration.

WASHINGTON, November 1, 1904.

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ARBITRATION AND THE HAGUE COURT

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I

HISTORICAL REVIEW

THE peaceful settlement of disputes among nations by means of arbitration and the prevention of war throughout the world are dependent in great measure upon the acceptability and efficacy of the Hague Permanent Court of Arbitration. It will be my purpose in the following pages to make this clear to my readers. Having regard to the busy public to whom it is addressed, I shall seek to make the discussion as concise as possible.

At the outset a seeming embarrassment presents itself in the fact that, while we are considering the subject, two powerful na-

tions are engaged in a sanguinary and wasteful conflict, which threatens to disturb the peaceful relations of other powers; that the ruler of one of the combatants was the prime mover in the establishment of the Hague Permanent Court; and that the other combatant was a party to its creation. I trust that, notwithstanding this apparently inconsistent and contradictory situation, we shall find in the present state of the affairs of the world good foundation of encouragement for the cause of arbitration and for the settlement of international controversies by peaceful means, and that the Hague Court has the promise of a wide field of usefulness opening up to it in the relations of the nations with each other.

For a proper comprehension of the subject, it will be necessary to note briefly the influences leading up to the creation of the Hague Court, and to consider the circumstances under which the Hague Peace Conference was called which framed the

rules by which the Court is governed, the composition and spirit of the Conference, the provisions of the convention establishing the Court, and the amendment, if any, required of its present constitution or rules.

The sentiment calling for the settlement of international controversies by peaceful methods rather than by the unreasoning and bloody arbitrament of war is not entirely of modern origin. At the different periods in the past when nations have emerged from barbarism into a more civilized state, there has arisen among men of good-will a desire for peace on earth. In the earliest records of history there are found isolated instances where great political and international questions have been submitted to some arbitrating power. The first attempt at international control for the preservation of peace is found in the Amphictyonic Council of the Greek States. The prevailing sentiment of that era among men of enlightenment and humane views was

expressed in the memorable statement of Thucydides, that "it is wicked to proceed against him as a wrongdoer who is ready to refer the question to an arbitrator."

It must be confessed, however, that the prevailing spirit of the ancients was warlike, but even the triumph of the great warriors and of the conquering nations was not without benefit to mankind. Under the universal sway of the Roman legions there came times when the doors of the Temple of Janus were closed, and peace was enforced throughout the widespread dominion of the Empire.

As the nations began to emerge from the Dark Ages, the spirit of peace made feeble efforts to assert itself. During that long night of war and devastation the Pope was the only restraining influence. The earliest advocates for another spirit to control the relations of nations with each other were found among the scholars and writers on international law. Grotius, whose treatise

on the Law of War and Peace has exerted the most profound influence among modern nations, in quoting the statement of Thucydides just cited, declared that "especially are Christian Kings and States bound to try this way of avoiding war;" and he proceeded to develop the idea which has had its partial realization in the Hague Conference. He wrote: —

"Both for this reason and for others it would be useful, and indeed it is almost necessary, that congresses of Christian Powers should be held, in which controversies which arise among some of them may be decided by others who are not interested, and in which measures may be taken to compel the parties to accept peace on equitable terms."

The plan of Henry IV of France for a Council or Congress of European powers to maintain peace among the nations was doubtless inspired by high motives, but it had the defect of a combination of force to bring about the Congress. Later, Wil-

liam Penn published a scheme "for the Establishment of an European Dyet, Parliament, or Estates." Likewise, the Abbé Saint Pierre of France, Bentham, Kant, and others in the seventeenth and eighteenth centuries devised and advocated plans for the creation of a congress or tribunal to secure universal and perpetual peace.

One of the most important events tending to support the project of such a congress and tribunal was the adoption by the American Colonies of the Constitution of the United States and the creation of a Supreme Court, before which the States, independent in all that related to their domestic government, agreed to bring or to submit all the controversies which might arise between them. A congress or union such as was formed by this Constitution was not one suitable for the civilized nations seeking for a combination to preserve universal peace, but the example set by the successful operation of its Supreme Court

was the cause of much encouragement to the advocates of an international tribunal, before which the nations might submit their controversies for peaceful settlement.

The nineteenth century was more fruitful than any similar era in the submission to the adjudication of special arbitration tribunals of the differences of nations insolvable by diplomatic methods. The most notable of these, and that which exerted the greatest influence upon the nations, was the arbitration of the bitter controversy between Great Britain and the United States, growing out of the American Civil War and the irritating questions existing with Canada, which were peacefully settled by the Treaty of Washington of 1871. Of this the British statesman and writer, John Morley, says:—

"The Treaty of Washington and the Geneva Arbitration stand out as the most notable victory in the nineteenth century of the noble art of preventive diplomacy and

the most signal exhibition in their history of self-command in two of the three chief democratic powers of the Western World."

As between these two kindred nations, it came to be the settled policy to adjust their differences which did not yield to diplomatic methods by a reference of them to special tribunals created for the purpose. In 1890, the Congress of the United States took a long step in advance by the adoption of a resolution "that the President be requested to invite from time to time, as fit occasion may arise, negotiations with any government with which the United States has or may have diplomatic relations, to the end that any differences or disputes arising between the two governments, which cannot be adjusted by diplomatic agency, may be referred to arbitration, and be peaceably adjusted by such means." And in 1893, the British House of Commons adopted a resolution approving of this action of the Congress and expressing "the

hope that Her Majesty's government will lend their ready coöperation to the government of the United States for the accomplishment of the object had in view." By this action these two great nations placed themselves on record officially as favoring the most complete submission of unsettled international differences to the peaceful method of arbitration.

At this period a somewhat different state of affairs existed in the relations of the different powers of Continental Europe. The warlike policy of Bismarck, which led to the humiliation of France and the consolidation of Germany, had converted the Continent into a military camp. The nations were vying with each other in building up their armies and navies. The enormous expenditure to maintain these establishments was becoming an intolerable burden, and the countries confronted each other in a state of armed peace, which might be broken by any untoward event.

In the last decade of the nineteenth century, when this state of affairs was realizing its highest development, Bismarck had retired to private life, and a new Emperor ascended the Russian throne. It is very doubtful whether the Rescript of the Emperor Nicholas, inviting the assembly of the Hague Conference, would have been issued if the Prince of "blood and iron" had still remained in control of governmental affairs in Germany. His retirement was followed by a relaxation of the term of service, and his death in 1898 deprived the military party of its greatest champion. The year following was signalized by the issuance of the invitation of the Autocrat of All the Russias to the governments of the world to send delegates to a Conference to consider some means of relieving the nations of the heavy burden of armament which was oppressing them, and devising a method for preserving peace or of restraining war.

II

THE HAGUE PEACE CONFERENCE

THE suggestion of the Hague Peace Conference was one of the most important events which marked the close of the nineteenth century. It gave promise of the culmination of centuries of study and labor and longing for some permanent arrangement whereby the world might be delivered from the strife and carnage with which it had been afflicted in all the past ages. The summons came to the nations at a time when peace prevailed, and when it was possible to bring together the most notable assembly of statesmen, scholars, and soldiers ever held.

Europe had previously witnessed many international congresses or conferences, but all of them had been of a very different character. Mr. Holls, the historian of the

Hague Conference,[1] in noting this fact, writes: —

"The vital distinction between these gatherings and the Peace Conference at The Hague is that all of the former were held at the end of a period of warfare, and their first important object was to restore peace between actual belligerents; whereas the Peace Conference was the first diplomatic gathering called to discuss guarantees of peace without reference to any particular war — past, present, or prospective."

The call for the Conference was followed by a hearty approval in the United States and much commendation in Great Britain; but the press of Europe was generally skeptical as to any practical results to flow from it. Even in Russia, whose ruler had initiated the Conference, little sympathy was

[1] The Peace Conference at The Hague and its Bearings on International Law and Policy, by Frederick W. Holls, a member of the Conference. New York and London: Macmillan & Co., 1900 A general reference is made to this work, and acknowledgment given of the use of its material in much of the discussion of this paper.

manifested with it. Since the days of Peter the Great the Russians had been led to believe that the army was the glory and bulwark of the empire, and the public mind was hardly prepared to admit that its maintenance was an unwise expenditure of public funds, or that it was an unnecessary burden upon the country. A feeling existed in France that the Conference might be made an obstacle to the realization of the hope of its people for the recovery of its lost provinces on the Rhine. Many journals in Germany combated the controlling idea in the call for a diminution or limitation of armaments, and maintained that the military establishment was not impoverishing the state, as the money was expended and redistributed in the country. Mr. Pierce, the American representative at St. Petersburg, reported to his government that "the general consensus of opinion among the members of the Diplomatic Corps now present appears to be that the proposition

is visionary and Utopian, if not partaking of Quixotism. Little of value is expected to result from the Conference, and indeed every diplomatic officer with whom I have talked seems to regard the proposition with that technical skepticism which great measures of reform usually encounter."

The composition of the Conference was a subject of some complexity. Were the South African republics to be invited, while a war was imminent between them and Great Britain, involving, in part, the suzerain rights of the latter? Was the Pope of Rome to be recognized in his claim as a temporal prince? Other embarrassing questions in this connection might be suggested. The Czar avoided these questions by confining the invitations to the countries having diplomatic representatives at St. Petersburg. Unfortunately, this omitted all the governments on the American Hemisphere, except the United States and Mexico. While these were thus deprived of the

privilege of participating in the Conference and assisting in shaping its action, they have taken steps to secure adhesion to the conventions framed by it. At the second congress of the American republics, held in the City of Mexico in 1902, a resolution was unanimously passed approving of the conventions, and soliciting the good offices of the United States and Mexico, participants in the Hague Conference, to secure their admission as signatory powers.

While it is highly desirable that these nations should be admitted to full participation in the conventions adopted by the Conference, there does not seem to be any disposition to deprive them of the most material benefits resulting from these instruments. As evidence of this, Venezuela was allowed in 1903 to bring her cause against certain of the European Powers before the Hague Court, and that republic, as well as the other governments concerned, have accepted the award of that Tribunal.

The Rescript of the Emperor of Russia, which constituted the invitation to the Conference, was issued August 24, 1898. From it the following extracts, indicating its scope, are made: —

"The maintenance of general peace, and a possible reduction of excessive armaments which weigh upon all nations, present themselves in the existing conditions of the world, as the ideals toward which the endeavors of all governments should be directed. . . .

"Filled with this idea, His Majesty has been pleased to order me to propose to all the Governments whose representatives are accredited to the Imperial Court, the meeting of a conference which would have to occupy itself with this grave problem.

"This conference should be, by the help of God, a happy presage for the century which is about to open. It would converge in one powerful focus the efforts of all States which are sincerely seeking to make the great idea of universal peace triumph over the elements of trouble and discord."

The invitation of the Emperor was

promptly accepted by the United States. The British government likewise gave early notice of its intention to "willingly accept," and after some delay, made necessary by the calling of a meeting of the Cabinet, the Prime Minister wrote: "His Majesty's government gladly accepts the invitation for a conference to discuss the best methods of attaining the two objects specified, namely: the diminution of armaments by land and sea, and the prevention of armed conflicts by pacific, diplomatic procedure."

Notwithstanding the apparent skeptical sentiment in Continental Europe, all the governments invited, with more or less promptness, accepted, and the meeting for the Conference was fixed for May 18, 1899, at The Hague. The reason for the selection of the capital of the Netherlands was stated by the Russian Minister of Foreign Affairs to be that "His Imperial Majesty considers it advisable that the Conference should not sit in the capital of one of the Great Powers

where so many political interests are centred, which might impede the progress of a work in which all the countries are equally interested." And M. de Staal, the Russian Ambassador, in opening the Conference, said: —

"In the quiet surroundings of The Hague, . . . upon the historic ground of the Netherlands, the greatest problems of the political life of States have been discussed; it is here, as we may say, that the cradle of the science of international law has stood; for centuries the important negotiations between European Powers have taken place; and it is here that the remarkable treaty was signed which imposed a truce during the bloody contest between States. We find ourselves surrounded by great historic traditions."

The edifice also in which the sessions of the Conference were held had special appropriateness for the objects to be attained. It assembled in the Oranje Zaal of the famous House in the Wood (Huis ten Bosch), decorated by some of the best known of the

Dutch artists. In welcoming the members to this hall, the Netherlands Minister of Foreign Affairs said: —

"Among the greatest of the allegorical figures which you will admire here, there is one relating to the peace of Westphalia, which especially merits your attention. It is the one where you see Peace entering this room for the purpose of closing the Temple of Janus. I hope, gentlemen, that this beautiful allegory will be a good omen for your labors, and that, after they have been terminated, you will be able to say that Peace, which here is shown to enter this room, has gone out for the purpose of scattering its blessings over all humanity."

Under such inspiring local surroundings, the members of the Conference entered upon their labors. They were neither dreamers nor theorists, but men of eminently practical experience in government, diplomacy, and war.

The respective nations sent as their representatives their first diplomatists, most erudite jurists, prominent men of affairs,

and skillful soldiers. The delegation of the United States comprised Ambassador Andrew D. White, Seth Low, Mayor of New York, Minister Newel, General Crozier of the Army, Captain Mahan of the Navy, and F. W. Holls of the New York Bar; and the delegations from the other countries embraced equally able and experienced men. An examination of the proceedings will show that throughout the deliberations of the Conference, they were animated by a sincere desire to accomplish its objects, as far as they deemed them practicable of attainment.

Its assemblage was in marked contrast with the congresses or conferences of the preceding centuries in the complete absence of display or spirit of rivalry. In the Congresses of Westphalia, Ryswick, and Utrecht, for instance, there was an ostentatious array of "coaches and six," a numerous retinue, and a constant struggle for precedence in processions and in the

council chambers. Here there was a quiet meeting of gentlemen, a recognition of the perfect equality of the smallest independent state, and a seating in the assembly hall in the alphabetical order of the names of the nations they represented.

Its members, too, were impressed with the importance of the event. In calling the Conference to order at its first session, the Dutch Minister said: "The day of the meeting of this Conference will, beyond doubt, be one of the days which will mark the history of the century which is about to close." In his opening address, the President, M. de Staal, asserted that it "marks a great date in the history of humanity." Its historian styled it "the first great Parliament of Man."

With such elevated ideas, the Conference entered upon its labors. But at the outset it met with discouragement and failure respecting one of its principal objects.

III

DISARMAMENT

IN the circular letter of the Russian Minister of Foreign Affairs of January 11, 1899, following the Rescript convoking the Conference, the subjects to be submitted for consideration were set forth in detail, and the first of these was as follows: —

"1. An understanding not to increase for a fixed period the present effective of the armed military and naval forces, and at the same time not to increase the Budgets pertaining thereto; and a preliminary examination of the means by which reduction might even be effected in future in the forces and Budgets above mentioned."

The evil effects of the vast armaments oppressing the nations of the earth were most strikingly set forth in the Rescript of the Czar. I quote from that paper: —

"In the course of the last twenty years the longings for a general appeasement have become especially pronounced in the conscience of civilized nations. The preservation of peace has been put forward as the object of international policy; in its name great States have concluded between themselves powerful alliances; it is the better to guarantee peace that they have developed, in proportions hitherto unprecedented, their military forces, and still continue to increase them without shrinking from any sacrifice.

"All these efforts, nevertheless, have not yet been able to bring about the beneficent results of the desired pacification. The financial charges following an upward march strike at the public prosperity at its very source.

"The intellectual and physical strength of the nations, labor and capital, are for the major part diverted from their natural application, and unproductively consumed. Hundreds of millions are devoted to acquiring terrible engines of destruction, which, though to-day regarded as the last word of science, are destined to-morrow to lose all value in consequence of some fresh discovery in the same field.

"National culture, economic progress, and the production of wealth are either paralyzed or checked in their development. Moreover, in proportion as the armaments of each Power increase, so do they less and less fulfill the object which the Governments have set before themselves.

"The economic crisis, due in great part to the system of armaments *à l'outrance*, and the continual danger which lies in this massing of war material, are transforming the armed peace of our days into a crushing burden, which the people have more and more difficulty in bearing. It appears evident, then, that if this state of things were prolonged, it would inevitably lead to the very cataclysm which it is desired to avert, and the horrors of which make every thinking man shudder in advance."

In a conference with the British Ambassador, following the Rescript, the Russian Minister of Foreign Affairs said that the Emperor, although deeply impressed with the desirability of a general disarmament, did not look for an immediate realization of the aims he had so much at heart,

but he desired to initiate an effort, the effects of which could only be gradual.

When the Conference came to consider the question, while there was much sympathy felt with the noble ideas entertained in the Czar's Rescript, it was found that the subject was of a very complex character, and that it would be difficult, if not impossible, to reach any agreement which would meet the Czar's desires. The long discussion which ensued is of much interest, but I can indicate something of its spirit by extracts from the speeches of the representatives of Germany and France. General von Schwarzhoff, in the course of a discourse of some length, said: —

. . . "I can hardly believe that among my honored colleagues there is a single one ready to state that his Sovereign, his Government, is engaged in working for the inevitable ruin, the slow but sure annihilation, of his country. I have no mandate to speak for my honored colleagues, but so far as Germany is concerned, I am able

to completely reassure her friends and to relieve all well-meant anxiety. The German people is not crushed under the weight of charges and taxes, — it is not hanging on the brink of an abyss; it is not approaching exhaustion and ruin. Quite the contrary; public and private wealth is increasing, the general welfare and standard of life are being raised from one year to another. So far as compulsory military service is concerned, which is so closely connected with those questions, the German does not regard this as a heavy burden, but as a sacred and patriotic duty to which he owes his country's existence, its prosperity, and its future.

"I return to the propositions of Colonel Gilinsky [Russian], and to the arguments which have been advanced, and which to my mind are not quite consistent with each other. On the one hand, it is feared that excessive armaments may bring about war; on the other, that the exhaustion of national wealth will make war impossible. As for me, I have too much confidence in the wisdom of sovereigns and nations to share such fears. On the one hand, it is pretended that nothing is asked but things

which have existed for a long time in some countries, and which, therefore, present no technical difficulties; on the other hand, it is said that this is truly a very difficult question, the solution of which would require a supreme effort. I am entirely of the latter opinion. We shall encounter insurmountable obstacles — those which may be called technical in a somewhat wider sense of the term. I believe that the question of effectives cannot be regarded by itself alone, disconnected from a number of other questions to which it is quite subordinated. Such questions, for instance, as the state of public instruction, the length of time of active military service, the number of established regiments, the effectives of each army unit, the number and duration of the drills or military obligations of the reserves, the location of the different army corps, the railway system, the number and situation of fortified places. In a modern army all of these belong together and form the national defense which each people has organized according to its character, its history, and its traditions, taking into account its economical resources, its geographical situation, and duties incum-

bent upon it. I believe that it would be very difficult to substitute for such an eminently national task an international convention. It would be impossible to determine the extent and the force of one single portion of this complicated mechanism." . . .

He then proceeded to amplify the reasons mentioned, and to maintain that in order to preserve the equilibrium as to armaments, governments must be left free to choose the means best suited to their requirements.

M. Bourgeois, the head of the French delegation, said: —

"I listened with great care in the last session to the remarkable speech of General von Schwarzhoff. He presented, with the greatest possible force, the technical objections which, according to his views, prevented the Committee from adopting the propositions of Colonel Gilinsky. It did not, however, seem to me that he at the same time recognized the general ideas in pursuance of which we are here united. He showed us that Germany is

easily supporting the expense of its military organization, and he reminded us that notwithstanding this, his country was enjoying a very great measure of commercial prosperity. I belong to a country which also supports readily all personal and financial obligations imposed by national defense upon its citizens, and we have not been hindered in the increase of our financial prosperity. But General von Schwarzhoff will surely recognize with me that if in his country, as well as in mine, the great resources, which are now devoted to military organization, should, at least in part, be put to the service of peaceful and productive activity, the grand total of the prosperity of each country would not cease to increase at an even more rapid rate. . . .

Gentlemen, the object of civilization seems to us to be to abolish more and more the struggle for life between men, and to put in its stead an accord between them for the struggle against the unrelenting forces of matter. This is the same thought which, upon the initiation of the Emperor of Russia, it is proposed that we should promote by international agreement.

If sad necessity obliges us to renounce for the moment an immediate and positive engagement to carry out this idea, . . . we shall not have labored in vain if in a formula of general terms we at least indicate the goal to be approached, as we all hope and wish, by all civilized nations."

Notwithstanding the support given to the Russian proposition by France, one of the most martial of the nations, and by various other governments, the objections voiced by the German delegate were too serious to be overcome. The sentiment of the members was that the Conference should avoid forming majority and minority parties, and hence nothing should be put forth as its action which could not command a practically unanimous support. The most that could be accomplished, therefore, was a general expression of sentiment on the subject in the following declarations, which were unanimously adopted: —

"The Conference is of opinion that the restriction of military charges, which are at present a heavy burden on the world, is extremely desirable for the increase of the material and moral welfare of mankind.

"The Conference expresses the wish that the Governments, taking into consideration the proposals made at the Conference, may examine the possibility of an agreement as to the limitation of armed forces by land and sea, and of our budgets."

While there was much regret felt at the failure to adopt some initiative for the limitation of armaments, it was something gained that a public declaration by such a body was made, that the present military establishments are a heavy burden on the world which it is extremely desirable in the interest of the material and moral welfare of mankind should be restricted, and that it is the duty of the governments of the earth to seek to reach an agreement to that end.

It must be recognized that the restriction or reduction of armaments is a most difficult political problem. The system has grown up in recent years of vast armies and formidable navies on the ground of self-defense. Never has the ancient proverb, *Si vis pacem, para bellum*, had greater force than to-day. Under its practice, for instance, France, which has had practically unbroken peace for more than a generation and is to-day on amicable relations with all the world, supports a much greater military establishment than when Napoleon was at war with almost all the nations of Europe.

In view of the hearty support given by our Government to the measures proposed by the Emperor of Russia, it may be well to consider the situation in the United States, with reference to this question of the restriction of armaments. It is a subject of congratulation that we have been a peaceful, not a military, people. Our na-

tional pride has been mainly in our achievements in the peaceful pursuits of mankind. It has been a source of regret to many of us that the fruits of war have made necessary recently a considerable increase in our standing army. Our boast has been that a visitor to our shores from the military countries of Europe could traverse the continent from ocean to ocean without meeting a soldier. Law and order have been enforced by the civil officials. We desire no change in that condition.

Our growing navy has justly become the pride of the country, but the burden of its construction and maintenance is awakening public attention. At the last session of Congress, a prominent and conservative member of the ruling party sounded a note of warning that our naval expenditures had reached about one hundred million dollars annually, and that with the vessels now under construction, and those authorized by Congress, these expenditures would

go on increasing in a rapid ratio.[1] It has been reported in the public press that the Secretary of the Navy has announced himself in favor of a navy equal to that of the greatest naval power in the world. I trust he has been incorrectly reported.

I cannot believe that such is the sentiment of our people. We neither wish nor need to enter into competition with the military nations either respecting our army or our navy. We can well await the completion of the naval vessels now in process of construction, to determine whether there is any necessity for a further increase. We should maintain ourselves in the attitude we have held in the past as advocates of peace and peaceful methods of settling international controversies, and our Government should keep itself in a position to be ready to respond, without embarrass-

[1] See Appendix F, for speech of Hon. Theodore E. Burton, Member of Congress from Ohio, on the Naval Appropriation Bill.

ment, to the call of the Hague Conference in seeking an agreement to restrict armaments. We should bear in mind the sentiments uttered by Washington: —

"My first wish is to see this plague to mankind [war] banished from the earth, and the sons and daughters of this world employed in more pleasing and innocent amusements than in preparing implements and exercising them for the destruction of mankind."

It is somewhat foreign to the subject under consideration to examine in detail other results of the Conference not relating to arbitration, and it may suffice to state that it agreed upon and executed two conventions for the regulation of war on land and at sea, which embodied the wisest and most humane principles of military conduct resulting from a study and discussion of these matters during the past half century, and which had their first codification in the "Instructions for the Guidance

of the Armies of the United States," issued at the beginning of the Civil War. Had the Conference accomplished nothing more than these two conventions and the accompanying declarations, it would have been entitled to the claim of being one of the most useful international assemblies in history.

IV

THE ARBITRATION CONVENTION

WE come now to consider the most important and the crowning work of the Hague Conference — the Convention for the Peaceful Adjustment of International Differences. It was reached not without much difficulty and discussion, and it was necessary, in order to secure unanimity of action, to compromise many conflicting views, and for the friends of arbitration to yield some points regarded by them as of much importance.

The Preamble to the convention, in which all the governments represented in the Conference joined, contains a very important declaration of principles, which shows that in sentiment, at least, the nations of the earth have reached a high standard

of international justice and humanity. It is as follows: —

"Animated by a strong desire to concert for the maintenance of the general peace;

"Resolved to second by their best efforts the friendly settlement of international disputes;

"Recognizing the solidarity which unites the members of the society of civilized nations;

"Desirous of extending the empire of law, and of strengthening the appreciation of international justice;

"Convinced that the permanent institution of a Court of Arbitration, accessible to all, in the midst of the independent Powers, will contribute effectively to this result;

"Having regard to the advantages attending the general and regular organization of arbitral procedure;

"Sharing the opinion of the august Initiator of the International Peace Conference that it is expedient to solemnly establish by an International Agreement the principles of equity and right, on which

repose the security of States and the welfare of peoples;" etc.

The convention or treaty is divided into four titles, or general provisions. The first consists of one brief paragraph, and is merely declaratory, but it is important because it solemnly commits by distinct agreement the powers joining in the convention "to use their best efforts to insure the pacific settlement of international differences."

The two following titles contain provisions having in view the carrying into effect of the foregoing declaratory agreement by means, first, of a resort to Good Offices and Mediation, and, second, of International Commissions of Inquiry. Thirteen articles of the convention relate to these two measures. That they are effective for the purpose for which they were framed is attested by the recent resort to a Commission of Inquiry by Great Britain

and Russia, to determine questions of fact about which there arose such a difference as threatened the amicable relations of the two nations.

But, as the topic under consideration has reference especially to the Permanent Court of Arbitration, I pass to the fourth title, — which in forty-seven articles creates the Court, defines its jurisdiction and the principles which are to guide it, specifies the manner in which its members are chosen, the rules governing its procedure, its awards, and other necessary details. The full text of the convention will be found in Appendix A, to which the reader is referred for the detailed provisions, and I address myself to some of their salient features, or those which have given rise to discussion or criticism.

The first distinctive feature of the Arbitration Convention is that it has no compulsory stipulation. It declares specifically in favor of "a pacific settlement of inter-

national controversies," and provides methods for their settlement by means of (1) mediation, (2) good offices, (3) commissions of inquiry, and (4) a court of arbitration; but no nation is pledged to resort to any of these methods, and, especially, is none compelled to submit its cause to the Hague Permanent Court. This feature is regarded by the most earnest advocates of arbitration as a serious defect of the treaty, but it was early made apparent in the Conference that there could be no agreement for compulsory stipulations, and it was even found difficult to bring about a concurrence on the convention as it stands.

The French delegates, who throughout the Conference were the zealous friends of arbitration, sought to secure the adoption of a provision investing the Bureau created at The Hague to act as the chancellery or clerk's office of the Permanent Court, with an international mandate, in case there should develop between two or more of

the signatory states one of the differences recognized as being a proper subject for arbitration, to remind the disputing parties of the provisions of the convention for arbitration. Even this apparently harmless provision met with the opposition of one of the Great Powers, and had to be omitted.

The sentiment, however, in favor of compulsory arbitration was so strong that an article was inserted in the convention reserving the right to any of the signatory powers to conclude general or special agreements, extending the obligation to submit controversies to arbitration in all cases which they consider suitable for such submission. It is a happy augury for the eventual recognition of the duty to submit all international disputes to arbitration, to note that treaties of the character indicated have been already entered into between a number of the leading powers of Europe.

France has the honor of taking the

initiative in this new and advanced movement. In October of last year its government entered into a treaty with that of Great Britain, stipulating for a period of five years to submit a certain specified class of cases to the Hague Tribunal;[1] similar conventions have been made by each of them separately with other European powers; and others of these powers have united in identical conventions. It is gratifying to know that as a step in the same direction, the Secretary of State, Mr. Hay, has consulted the Senate, as the coördinate branch of the treaty-making power, on the subject, and it is confidently expected that at the next session of the Senate the President of the United States will submit to that body for approval arbitration treaties with a number of nations, with provisions similar to those entered into between the European governments.

[1] For full text of the Anglo-French treaty, see Appendix B.

The Hague convention recognizes two classes of controversies as suitable for submission to the Hague Court, to wit: questions of a judicial character and those regarding the interpretation or application of international treaties. The article of the arbitration treaty between France and Great Britain, and, with two exceptions, the other European powers just alluded to, is as follows: —

"Differences of a judicial order, or relative to the interpretation of existing treaties between the two Contracting Parties, which may arise, and which it may not have been possible to settle by diplomacy, shall be submitted to the Permanent Court of Arbitration established by the Convention of July 29, 1899, at The Hague, on condition, however, that neither the vital interests, nor the independence or honour of the two Contracting States, nor the interest of any State other than the two Contracting States, are involved."

While this stipulation is a step in advance of the Hague convention in that it makes

arbitration compulsory, it is a qualification or limitation of that treaty in that it excepts from the stipulation such of the two classes of cases as, in the judgment of the contracting parties, involve the vital interests, the independence, or the honor of either state. This reservation raises the important, broad, and difficult question of what questions are proper for submission to international arbitration. Questions involving the independence of a sovereign state may not be difficult of determination, but the "vital interests" of a state, or its "national honor," may become very vague or elastic, and dependent in great measure upon the temperament or condition of the authority having the right to determine or allege them.

In the interest of the peace of the nations, it is of the utmost importance that the exceptions to arbitral submission be as few and restricted as possible. It is the aim of the most devoted friends of the cause that

the nations may ultimately reach the position where they will agree to submit all international controversies, without exception, to a peaceful method of adjustment. There have been some recent treaties and notable declarations emanating from important bodies to that effect. The first conference of the American States, embracing all the independent countries of the hemisphere, which assembled in Washington in 1890, framed and recommended the adoption of an arbitration treaty, which contained the stipulation that "the sole question which any nation is at liberty to refuse to arbitrate is a question which may imperil its independence." In closing the deliberations of that conference, its president, James G. Blaine, who by some has been charged with aggressive statesmanship, referring to this arbitration treaty, said: "We hold up this new Magna Charta, which abolishes war and substitutes arbitration between the American

republics, as the first and great fruit of the International American Conference."

The Washington Conference on International Arbitration, held in January, 1904, was a distinguished and representative body of men in public life, in the professions, the industries, and commerce. Its committee on resolutions was composed of two of the American members of the Hague Court, five ex-ambassadors and ministers, three of the first lawyers in the country, and other able men. The subject of the reservations or exceptions proper to be made in arbitration treaties was fully considered, and they reported through their chairman, Judge George Gray, that it was the duty of the United States to enter into treaties with Great Britain and other powers for the submission to the Hague Permanent Court or some special tribunal of "*all* differences which they may fail to adjust by diplomatic negotiation."

That this position is not chimerical is

shown by the fact that two of the leading nations of South America, Chile and Argentina, have united in a treaty binding themselves to submit all controversies between them, not susceptible of diplomatic settlement, to arbitration, except questions involving their independence. Following the movement of Great Britain and other European countries for compulsory conditional arbitration, as already noticed, the kingdoms of the Netherlands and Denmark, in February, 1904, entered into a treaty pledging themselves "to submit to the Permanent Court of Arbitration [at The Hague] *all* mutual differences and disputes that cannot be solved by means of a diplomatic channel." [1]

The arbitration treaties now in process of negotiation by Secretary Hay with European powers are understood to be similar in their terms to the treaty between

[1] For full text of the Netherlands-Denmark treaty, see Appendix C.

Great Britain and France, containing the exceptions cited. While they do not reach the high ideal fixed by the Washington Conference and attained by Chile and Argentina, and the Netherlands and Denmark, such treaties are an important step in advance of the Hague arbitration convention and in the direction of the ideal of the advocates of universal peace. If, as seems to be the case, the Great Powers of Europe cannot be brought to accept the form of convention entered into between the Netherlands and Denmark, Secretary Hay should be commended and supported in his action in joining the Great Powers in the conditional compulsory treaties to which they have given their assent. These treaties have a duration of only five years, and we may cherish the hope that at the date of their expiration the public sentiment of the world may be such that they may be renewed with a broader scope of arbitration.

The national honor is a matter which

our first impulse of patriotism would decide was beyond the province of arbitration, but a more dispassionate consideration will lead us to see that it is not always so. In the heat of the dispute over what are known as the "Alabama Claims," involving important questions of international law and high state policy, when the American minister in London proposed arbitration, Lord Russell replied: —

"It appears to her Majesty's government that neither of these questions could be put to a foreign government with any regard to the dignity and character of the British Crown and the British nation. Her Majesty's government are the sole guardians of their own honour . . . and must therefore decline either to make reparation and compensation . . . or to refer the question to any foreign state."

When, however, the passions of the hour had passed, the British government saw how unwise it was to allow an attitude so sensitive and unsubstantial as the so-styled

"national honor" to obstruct a peaceful settlement of its controversies with a kindred nation, and the Treaty of Washington of 1871 brought forth the Geneva Arbitration, so beneficent in its results for both nations and the world. A century and less ago, public social sentiment in England and America demanded that a personal affront, supposed or real, should be atoned for by the blood of the aggressor, but the real gentleman of English and American society of to-day leaves the vindication of his honor to the courts of justice or public opinion. There is no reason why the same course should not be pursued by nations. Mr. James Bryce, in discussing the article of the Anglo-French treaty cited by me, says: —

"The exception of 'honour' made in the treaty just quoted is of very doubtful merit, because questions of so-called national honour are often just the questions which most need to be referred to arbitration,

inasmuch as they are those which a nation finds it hardest to recede from when it has once taken up a position, so that the friendly intervention of a third party is especially valuable. . . .

"The value of arbitration, or of conciliation by a third party, lies not merely in its providing a means of determining a difficult issue of law or fact, but in its making it easy for the contracting parties to abate their respective pretensions without any loss of dignity."

In the treaty of compulsory arbitration between Mexico and Spain of 1902, "national independence and honor" were excepted; but an article of the treaty set forth what are not to be held as embracing these exceptions.[1]

It is asserted that many political questions are not suitable subjects for submission to arbitration. The questions which brought on the Russo-Japanese war have been cited among those which are not arbitrable, and likewise the Monroe Doc-

[1] For the Mexican-Spanish treaty, see Appendix D.

trine. None of the leading nations are prepared to-day to enter into a treaty of unconditional arbitration, but the oftener they submit their differences to arbitration, the nearer they approach that goal. Great Britain and the United States have since the War of 1812 submitted all their many matters of dispute to a peaceful method of adjustment. An examination of their numerous arbitration treaties, embracing a great variety of subjects, will show that no question can in the future arise between them which will more seriously involve their territory, the honor of the countries, their vital interests, or their independence, than those which have already been submitted to arbitration.

Hence, so far as Great Britain is concerned, it may be safely asserted that the Washington Conference committed no error in recommending that the United States enter with that power into a treaty of unconditional arbitration. If, after nearly

a century of peaceful settlement of their disputes, these two countries can make such a convention, they should hardly be styled dreamers or enthusiasts who look forward to the time when all nations of the earth, through peaceful intercourse and forbearance, will find a better method of adjusting their differences than by the arbitrament of war.

In the Hague Conference the question arose as to what stipulation should be inserted in the treaty guaranteeing the enforcement of the award of a court of arbitration. In this instance, as when the subject of compulsory arbitration was under discussion, it was found that if constraint was to be applied to a recalcitrant power, it would have to be through some kind of international military force, and the delegates were in no frame of mind to consider such an alternative. Besides, it was cited that during the many arbitration cases of the past century, a sense of equity

and the force of public opinion had been sufficient to secure acceptance of the award; and the Conference regarded it as sufficiently effective to insert an article declaring that "the agreement of arbitration implies the obligation to submit in good faith to the decision of the arbitral tribunal."

V

THE HAGUE COURT

ONE of the most important questions discussed by the Peace Conference, in connection with the arbitration convention, was whether its provisions should be carried out through provisional or special tribunals, or whether a permanent court should be created for that purpose.

The Interparliamentary Union, a voluntary organization of members of the national legislative bodies of the nations, having for its object the promotion of international arbitration, at its meeting in Holland in 1894, adopted a declaration in favor of a permanent court of arbitration. In 1895, at the first meeting of the Mohonk Conference on international arbitration, a body which has exercised a most salutary influence upon public sentiment, Dr. Ed-

ward Everett Hale introduced a resolution in favor of the establishment of a permanent international court of arbitration. The resolution was referred to a committee of prominent lawyers to study and report upon the subject; and at the next annual meeting of the Conference, the resolution was unanimously adopted.[1]

When the Hague Peace Conference was called, the United States was from the beginning in favor of the creation of a permanent court. In 1896, in addition to the declaration of the Mohonk Conference, the New York State Bar Association

[1] The Conference in its public declaration said: "We earnestly call upon statesmen, ministers of every faith, the newspapers and periodical press, colleges and schools, chambers of commerce and boards of trade, organizations of workingmen, and upon all good men and women, to exert their influence in favor of this movement, both in making known to the President of the United States their desire for *a permanent tribunal*, and in helping to create a larger public sentiment against war, which shall be an efficient and constant support of the new judicial system thus to be founded."

laid before the President a memorial setting forth a permanent tribunal as the essential feature of any general scheme of arbitration, and the delegates of the United States to the Conference had been instructed to make this a cardinal point in their propositions. But the honor fell to the chairman of the British delegation, Lord Pauncefote, to become its special champion in the deliberations. At one of the early sessions of the Conference he introduced the subject with the following remarks: —

"Mr. President: Permit me to inquire whether, before entering in a more detailed manner upon our duties, it would not be useful and opportune to sound the Committee on the subject of a question which in my opinion is the most important of all, namely: the establishment of a permanent international tribunal of arbitration, such as you have mentioned in your address. Many proposed codes of arbitration and rules of procedure have been made, but

up to the present time the procedure has been regulated by the arbitrators, or by general or special treaties. Now it seems to me that new codes and regulations of arbitration, whatever may be their merit, do not greatly advance the grand cause for which we are gathered here. If it is desired to take a step in advance, I am of the opinion that it is absolutely necessary to organize a permanent international tribunal, which can be called together at the request of contending nations. This principle once established, I believe we shall not have any difficulty in agreeing upon details. The necessity for such a tribunal and the advantages which it confers, as well as the encouragement and in fact the prestige which it will give to the cause of arbitration, have been demonstrated with as much eloquence as force and clearness by our distinguished colleague, M. Descamps. . . . I have no more to say upon this subject, but I would be very grateful to you, Mr. President, if before proceeding any further you would consent to elicit the ideas and sentiments of the Committee upon the proposition which I have the honor of submitting to

you, touching the establishment of a permanent international tribunal of arbitration."

This brief speech, it is recorded, struck the keynote of the subsequent discussion. It was antagonized by Germany, but the sentiment was so strongly in its favor that the German delegates were induced to withdraw their objection, and provision was made in the convention for a Permanent International Court. This action was a source of much gratification to the advocates of international arbitration, who for centuries had looked forward with hope to the establishment by the nations of the earth of some form of congress or court, which should have a continuous existence and be clothed with functions for the preservation of peace.

The provisions of the convention are that each of the signatory powers shall appoint for a term of six years as members of the Permanent Court not more than

four persons, "of recognized competence in questions of international law, enjoying the highest moral reputation." These persons constitute a Permanent Court of Arbitration, accessible at all times and acting in accordance with the prescribed rules of procedure.

The members of the Court thus constituted do not sit, however, as a collective body, but when two or more nations have a case to submit to arbitration, they select by mutual agreement one, three, or five members, as may be stipulated, from the persons constituting the Court, who will act as the tribunal to try the case. So that it may happen that some members of the Court may never be called upon to discharge the functions of a judge.

It was thought wise not to restrict the liberty of action of the arbitrating nations, and they have been left free to select the judges from the permanent panel, so to speak, of the Court. Likewise, though The

Hague is designated as the place where the Court shall hold its sessions, another place may be designated by agreement of parties litigant. Also, while detailed rules of procedure are provided in the convention, these may be varied by special agreement of the parties.

The convention contains a provision (Article 52) that the award of the Tribunal shall be accompanied by a statement of the reasons upon which it is based, but this article was not adopted without serious objection in the Conference. It was recognized that much advantage would be derived from the opinions of judges of such high authority in the creation of a body of international jurisprudence, but it was urged that the opinions might contain criticism of the litigating parties, or other powers, harmful and unnecessary. This surmise became a reality when, during the present year, the president of the Tribunal in the Venezuela arbitration, who

was a Russian, made some utterances which were seriously resented by the Japanese.

The question of the finality of the award was much debated in the Conference. It was contended that a rehearing of a case once decided would diminish the moral authority of the Tribunal and the weight otherwise given to its first decision. The American proposition was that a hearing should be granted "upon presentation of evidence that the judgment contained a substantial error of fact or of law." The practice in the United States sustained such a provision, and its government had had experience which showed that some provision for rehearing was desirable. For instance, in the Mexican claims commission, the umpire, Sir Edward Thornton, had decided that when his decision was once rendered, his relation to the case was terminated, and that even if fraud was shown to have been practiced upon

the commission, the award could not be reopened, but relief would have to be sought by a direct appeal to the government concerned. The Conference finally agreed upon a provision that a rehearing should be had "only on the discovery of new facts of such a character as to exercise a decisive influence upon the judgment, and which at the time of the judgment were unknown to the Tribunal itself and to the parties demanding the rehearing."

The convention contains a stipulation that the proceedings in a case should embrace oral argument of counsel before the Tribunal. The prevailing practice in arbitration during the last century was to accompany the documentary evidence in the case with a printed or written argument only. The Geneva arbitration of 1872 gave the right to the tribunal to call for oral argument on any specific question, and a brief oral discussion was accordingly had. In the Fur Seal arbitration at Paris in 1893,

the treaty stipulated for general oral argument, and several weeks were occupied by counsel; and a similar practice was observed in the Venezuela boundary arbitration at Paris in 1899. The Hague convention recognizes this as the proper practice. Its effect is to considerably prolong the sessions of the Tribunal, but it affords the litigating parties a more satisfactory elucidation of the questions at issue.

Having reviewed the more important provisions of the Hague arbitration convention, I pass to a consideration of the practical working of the Permanent Court organized under it.

When the Hague Conference adjourned, there was a widespread belief that it had accomplished little towards the prevention of war. It had failed to agree upon either the restriction or the diminution of the vast armaments which were oppressing the nations and threatening the peace of the world. The arbitration convention, which

left it purely optional with the nations to observe its provisions, did not impress the general public as of much practical value; and there was a skeptical feeling that no powerful nation would ever invoke the services of the Permanent Court to save it from an armed conflict with another state.

However, when the convention was submitted to the governments to ratify the action of the delegates, no one of them cared to reject it. The friends of arbitration were reassured when the intelligence flashed across the Atlantic that the Senate of the United States had unanimously approved it, and that the President had promptly proclaimed it to the world. The other signatory nations took similar action. The convention thus becoming a completed instrument, the respective governments appointed from their most distinguished public men and able jurists the members of the Permanent Court. The world's query

then was — What nations will now come forward to submit to the Court a controversy insolvable by diplomacy?

It is a matter of pride for this Continent that the two greatest republics of America should be the first to invoke the services of the Hague Court. The Supreme Court of the United States, which is the nearest approach to that Tribunal, had to wait a longer time after its creation before it heard its first case. The Pious Fund claim was one which had vexed the governments of the United States and Mexico for nearly half a century, and had baffled the efforts of well-disposed diplomacy. Having faith in the efficacy of the Court, and obedient to the spirit of the arbitration convention of which they were signatory parties, they entered into an agreement to submit the claim to that Court. The case was heard under satisfactory conditions, a decision rendered, which has been accepted by both parties, and that source of

difference between the neighboring republics has been forever removed.

But, said the skeptics, the case of Mexico was one involving merely a money claim; the test will come when nations heated to the point of war are called upon to yield their pretensions to the decision of the Hague Court. Such a case was not long delayed. Three of the most powerful nations of Europe were soon engaged in flagrant hostilities against a weak American state. Venezuela, though not a party to the Hague convention, appealed to it for the determination of the question at issue. The allied powers, Great Britain, Germany, and Italy, in disregard of the Hague arbitration convention, to which they were parties, turned to the President of the United States and asked him to become the sole arbiter of the controversy. It was a high mark of confidence in the American chief magistrate, and very flattering to him personally, but his sense of duty to the

world was greater than his pride of person, and he pointed to the Hague Court and declined the offer. In that act President Roosevelt rendered a greater service to the cause of peace and international arbitration than any other man of his generation. The motive which animated his conduct is well stated in his annual message of 1903 to the Congress of the United States: —

"It seemed to me to offer an admirable opportunity to advance the practice of the peaceful settlement of disputes between nations, and to secure for the Hague Tribunal a memorable increase of its practical importance. The nations interested in the controversy were so numerous, and, in many instances, so powerful, as to make it evident that beneficent results would follow from their appearance at the same time before the bar of that august tribunal of peace."

The action of President Roosevelt led to the appearance at The Hague of a distinguished array of nations. Russia and Austria were represented in the Tribu-

nal,[1] while Venezuela, Great Britain, Germany, Italy, France, Spain, Belgium, the Netherlands, Sweden and Norway, the United States, and Mexico appeared as interested parties.

The decision of the Tribunal, conceding preferential treatment to the allied powers who sought to enforce by war their claims against Venezuela, has been severely criticised, but the general results are recognized as of great value. Mr. MacVeagh, of the American counsel, while questioning the soundness of the decision, has said: —

"There can, however, be no manner of doubt that the arbitrators acted according to the best light they had, nor can there be any doubt that the presence for the first time of so many great nations at the bar of the Tribunal outweighs in usefulness any adverse result of the decision itself."

[1] The terms "Court" and "Tribunal" seem to be used interchangeably in the convention, but "Tribunal" is usually applied to the body selected from the panel of the Court to hear and determine a particular case.

It appears that the Tribunal based its decision upon the finding that Venezuela promised the allies that if they would cease their hostile operations, they should have a priority of claim upon the customs receipts, and it did not pass upon the ethical question urged by the interested peaceful powers. Hon. J. M. Dickinson, whose views are of special value because of his experience as senior counsel at London before the Alaskan Boundary Commission and his active practice in the highest courts of the United States, in discussing this matter has said: —

"If the decision were wrong, this furnishes no just ground for saying that the future usefulness of the Court is impaired. No one ever expected infallibility from any human court, and we do not think of abolishing our courts because they err, as all of them at times do.

"Under the corrective influence of international jurists, unsound doctrine will be repudiated. This is more easy of accom-

plishment by the Hague Court than by any other. The same members are rarely chosen to sit again. There will be a constant change in judges. As new cases arise, not having any pride of opinion in the decision of others, they will the more promptly expound as the law that which the enlightenment of the time shall demand, for international law will always develop and stand as the exponent of such international justice and morality as the consensus of nations shall approve." [1]

The importance of the Venezuela case at The Hague can scarcely be exaggerated. The thirteen nations there represented, embracing a population of more than four hundred and fifty millions, the most enlightened as well as the most powerful of the world in military establishment, are a striking object lesson of the wisdom and efficacy of arbitration. President Roosevelt has anticipated those results in such

[1] International Arbitration, an Address delivered at Vanderbilt University, by Hon. J. M. Dickinson, 1904, page 23.

happy language that I quote again from his message to Congress: —

"Such an imposing concourse of nations presenting their arguments to and invoking the decision of that high court of international justice and international peace can hardly fail to secure a like submission of many future controversies. The nations appearing there will find it far easier to appear there a second time, while no nation can imagine its just pride will be lessened by following the example now presented. This triumph of the principle of international arbitration is a subject of warm congratulation, and offers a happy augury for the peace of the world."

The President's anticipation is being realized, as three of the Powers represented in the Venezuelan arbitration — Great Britain, France, and Germany — have united in an agreement with Japan, a signatory party to the Hague convention, to submit to the Permanent Arbitration Court a controversy between them which has not yielded to diplomatic negotiation;

and the case is now in process of submission. As already noted, Great Britain and Russia have just invoked another provision of that convention, in their mutual desire to avoid threatened hostilities. Other nations will, with greater frequency, carry their differences to The Hague; and the Temple, for the construction of which the generous American citizen, Mr. Carnegie, has provided the means, bids fair to be thronged with suitors appealing to reason and international justice for the protection of their national rights.

The only dark cloud which obscures the otherwise brilliant prospect is the gigantic and terrible conflict now going on between Russia and Japan, and the sad fact that although they were both signatories of the Hague convention, that agreement was not efficacious for the preservation of peace. The convention contains an article which makes it the duty of the signatory powers, "in case a serious dispute threatens to

break out between two or more of them, to remind these latter that the Permanent Court of Arbitration is open to them," and that "the advice given to them, in the highest interests of peace, to have recourse to the Permanent Court, can only be considered as an exercise of good offices," and not as an offensive act. Although France and England, two of the most influential powers in the creation of the Hague Court, were connected with the belligerents by more than friendly ties, yet neither of them, nor any other of the powers so deeply interested in the peace of the Orient, discharged their duty under Article 27 of the convention and reminded them that the Hague Court was open for the settlement of their controversy.

This is a discouraging fact, but only emphasizes the position to which I have already referred, that there are some questions of policy and high politics which, in the present temper of the nations, can-

not be adjusted by peaceful methods. This terrible conflict, however, by its very horrors and evil consequences for both belligerents, makes the world stand aghast and the great heart of humanity demand a better method for the settlement of international differences than by the cruel and destructive methods of war. If this terrible conflict shall bring the nations to see the uselessness of war, the frightful loss of life and exhaustion of the resources of two great peoples will not have been entirely without benefit. Let us hope, also, that even yet the contending nations which are engaged in this unreasoning strife of arms may awake to their duty under the Hague convention, and leave to the Permanent Arbitration Court the final adjustment of their differences.

VI

SUGGESTED MODIFICATIONS OF THE COURT

THE practical working of the provisions of the Hague convention, as shown in the two cases which have been already dispatched by the Court, has given rise to various suggestions for some modification of, or addition to, these provisions. Hon. W. L. Penfield, Solicitor of the United States Department of State, who was of counsel for the United States in the hearing of both the Pious Fund and Venezuela cases, has made some valuable suggestions in that direction,[1] as well as other experienced jurists. I have space to notice these only very briefly.

[1] Some Problems of International Arbitration, an Address delivered before the New York State Bar Association, by Hon. William L. Penfield, 1904.

The convention provided that the conditions under which powers not represented in the Conference might become adherents to it should be determined hereafter by the powers which had already signed it. No action has yet been taken in that direction. For this reason, all the American republics, except the United States and Mexico, have no representation in the Hague Court, and the result is that it is practically a European tribunal. When these two last-mentioned nations came to select the judges to try the Pious Fund case, they were forced either to select judges from among their own citizens, or to choose those of European or Oriental nationalities. It is a serious defect in the organization of that Court that these numerous American republics should be excluded from furnishing their quota for the permanent panel. The Conference contemplated the desirability of calling another similar conference at no distant day. Should such

further conference be held, it would doubtless heal this defect in the existing convention.

There is nothing in the convention which prevents one of the litigants from selecting as a judge to hear his case one of the members named by it for the permanent panel. It has been a much disputed question whether an interested party should be represented on the Court by a judge of its own nationality. In the two cases thus far heard by the Court, the judges were taken from non-interested countries, and the weight of opinion seems to be in that direction.

The propriety of a member of the permanent panel of the Court appearing as counsel for a litigating party has been seriously questioned. Two of its members appeared as opposing counsel in the Pious Fund case, and other members appeared in like capacity in the Venezuela case. In the latter instance, protests against the

practice were filed in the Court by both Venezuela and Great Britain. This subject was fully discussed in the Conference, and an effort was made to place in the convention a prohibition against the practice; but while the general sentiment was against the assumption of the functions of counsel by a member of the Court, it was deemed best to take no definite action, trusting that the good sense and propriety of the members of the Court would finally evolve a rule which would safeguard the reputation of the bench. The experience in the two cases heard seems to call for a prohibitive rule on the subject.

Attention has been directed to the fact that the organization of the Court is a loose one. The persons are named by the respective governments and they are enrolled as members of the Court, but, as has been seen, they may never be called upon to serve as judges. Yet their acceptance of the appointment implies a

readiness to serve whenever chosen. No provision is made for compensation, except when the judges are actually called to duty. As the members are expected to serve whenever invited, without regard to the importance of the case, it has been suggested that some arrangement should be made to pay them a reasonable retainer. When this matter was before the Conference, it was considered the province of each government to determine the subject with its own appointees.

An argument used against a resort to the Hague Court is the matter of expense. In the Pious Fund case, the five judges were paid $5000 each. To this expense was added that for counsel, a staff of clerks, French and English stenographers, and printing the evidence and arguments. The objection might not be weighty with the great nations, but the expense would press heavily against the smaller states with limited resources. It is a matter which

commends itself to the consideration of the Great Powers.

The language to be used in the proceedings and records of the Tribunal has been wisely left by the convention to be fixed by the parties resorting to the Tribunal. The experience of the Court has shown that it is of much importance that in the special agreement of arbitration in each case the language to be used should be explicitly fixed. French is the prevailing tongue used in the international assemblies in Europe and in diplomacy, but its compulsory use would, in many cases, work inconvenience and sometimes serious hardship. Its enforcement in the Hague Tribunal would debar the great majority of American lawyers, and would discourage the resort by American States to the Court. English is now the language most largely prevalent among the Christian nations.

In the Pious Fund case, the minutes of the proceedings and the award were in

French, the oral language of the Tribunal was English, and both French and English were used in the oral arguments; the Parisian stenographer, however, confessed his inability to accurately report some of the arguments spoken in French with a Spanish accent. In the Venezuela case, it was agreed that the English language should be used in the proceedings, but that the arguments might be made in any other language. No stipulation was made that the judges should be familiar with the English language, as it seemed unnecessary, in view of the provision as to the language of the proceedings; but it resulted that some of the members of the Tribunal were not able to speak English fluently, and out of consideration for them it was agreed that the language used orally by the Tribunal should be the French.

Notwithstanding the defects which have been developed in the condition and practice of the Hague Court, some of which I

have briefly noted, it is gratifying to see that it has proved so well adapted for the exalted purpose for which it was created, and that its imperfections, which are not serious, may easily be cured.

VII

SPECIAL AND JOINT COMMISSIONS

UP to this point we have been considering the adjustment of international differences by a resort to the Hague Court. But the nations which are parties to the Hague arbitration convention are not precluded from the adoption of some other method for the amicable adjustment of their controversies. It may be found less expensive and more expeditious, in cases of minor importance, to resort to other channels than the Hague Court. So also there may be exceptional reasons why appeal to this Court may not seem best. The fact already discussed, of questions which governments are not willing to put to the hazard of arbitration, leads to a consideration of some other course of action to avoid hostilities.

The method suggested is either by the creation of a special international tribunal, composed of an uneven number of judges, or, as in some cases in the past, by a joint commission, composed of an equal number of citizens or subjects of the interested parties. The special arbitration tribunal involves questions so similar to those already discussed as to the Hague Court, that I deem it unnecessary to give further attention to it. I therefore invite a consideration of joint commissions of the interested nations.

It has been seen that there is a class of controversies which, in the present state of public sentiment, it does not seem possible to submit to arbitration. We have seen that the Hague convention recognizes only two classes of cases as within its purview — questions of a judicial character and regarding the interpretation of treaties; and that the Anglo-French and other recent conventions, in seeking to make

arbitration compulsory in these two classes, have still further limited its scope by exempting such of those questions as affect the vital interests, the independence, and the honor of the state. Hence, until the intelligence and conscience of mankind are awakened to demand a higher standard of international justice, there are a large number of questions, especially of a political character, which remain outside of the pale of arbitration.

Is it not possible to control controversies belonging to these classes in such a way as to bring about an adjustment in aggravated cases by some other method than the arbitrament of war? The Washington Conference, while it recommended unconditional arbitration, recognized the existence of the sentiment alluded to; and it further recommended that: —

"Governments should agree not to resort in any case to hostile measures of any description till an effort had been made to

settle any matter in dispute by submitting the same either to the Permanent Court at The Hague, or to a commission composed of an equal number of persons from each country, of recognized competence in questions of international law."

Ex-President Harrison, in his argument before the Venezuela tribunal at Paris in 1899, referred to the work of the Hague Conference, then in session, in the following forcible language: —

"MR. PRESIDENT: It has been to me a matter of special interest that the President of this tribunal [Professor F. de Martens], after his designation by these two contending nations for that high place which assigned to him the duty of participating in practical arbitration between nations, was called by his great Sovereign to take part in a conference which I believe will be counted to be one of the greatest assemblies of the nations that the world has yet seen, not only in the personnel of those who are gathered together, but in the wide and widening effect which its resolutions are to have upon the intercourse between na-

tions in the centuries to come. There was nothing, Mr. President, in your proceedings at The Hague that so much attracted my attention and interest as the proposition to constitute a permanent court of arbitration. It seems to me that if this process of settling international differences is to commend itself to the nations, it can only hope to set up for the trial of such questions an absolutely impartial *judicial* tribunal. If conventions, if accommodation, and if the rule of "give and take" are to be used, then let the diplomatists settle the question; but when they have failed in their work, and the question between two great nations is submitted for judgment, it seems to me necessarily to imply the introduction of a judicial element into the controversy."

President Harrison was addressing his remarks to a tribunal which he was seeking to impress with the judicial character of the question before it, but which failed to take that view of it in their decision, and did just what he said a judicial tribunal should not do — compromise the conflicting territorial claims of the litigants. The

case he had in hand illustrates the fact that arbitration tribunals often have to reach a mean course between the contending claims submitted to them. With the instincts of a highly trained judicial mind, with the ardent devotion which many of my readers know he had for his profession, the American lawyer in Paris pleaded with good reason for a high ideal for the tribunal about to be created at The Hague. It may not always be realized there, but it is possible in such commissions as seem to be contemplated by the Washington resolution just quoted.

Allusion has been made to the fact that questions often arise between nations which they are not willing to hazard by the award of foreign judges, and about which, with the most friendly intentions, they cannot agree. The controversy may involve questions of law, or mixed questions of law and fact. It is often quite possible to reach a solution by reference to a commission of

impartial jurists composed of an equal number from both countries. The Alaskan boundary dispute is a happy illustration of this.

The Alaskan boundary had become an irritating controversy, which threatened the peace of the two countries. Great Britain was willing to submit the question to arbitration, but in view of the fact that the United States had had uninterrupted possession of the territory in dispute for many years, the public sentiment of the country would not permit its rulers to accept the British proposition. After much discussion, it was agreed that the questions involved should be submitted to a commission of six jurists, composed of three citizens or subjects from each country. The commission met in London to examine the evidence and hear argument of counsel. It was conceded that all questions turned upon the interpretation of a treaty, a duty eminently suited to the determination of

jurists. A decision on all the questions was made, and in accordance with that decision, the two governments have directed their survey officials to lay off and mark the boundary, and that work has been completed. A dispute which could not go to arbitration was thus adjusted by a judicial commission. Such a procedure will commend itself especially to lawyers, whose province it is to aid in the settlement of controversies by law and reason, and not by force.

Special commissions for the consideration of matters which cannot secure a reference to arbitration may serve other useful purposes. The finding of a body of jurists who look dispassionately and judicially at the question, unembarrassed by policy or politics, may so elucidate the law and the facts as to enable the disputing governments to reach a basis of settlement which had not been possible through diplomacy.

They also serve the important purpose of securing delay when the passions of both the disputant nations are wrought up to a high pitch of excitement and patriotism. Most wars may be avoided, if time is afforded to treat the subject of dispute with calmness and sober reason. It should be the aim of the advocates of arbitration to secure an amendment or addition to the compulsory treaties recently made between various of the European powers, similar to the provision recommended by the Washington Conference, pledging the contracting parties, where arbitration is unattainable, not to resort in any case to hostilities till an effort is made to settle the matter in dispute by a commission of jurists of the nationalities of the parties. Such a stipulation will go far to preserve the peace of the world.

VIII

CONCLUSION

SOME of the friends of universal peace, while commending the spirit of the Hague Conference, assert that its Permanent Court is hopelessly inadequate, that arbitration treaties between nations, such as that between France and England, will not prevent war, and that the effective remedy is a world's parliament of nations, clothed with a mandate to preserve peace, and to compel disputing nations to submit their grievances and claims to arbitration or the judgment of the parliament.

Are the promises held out by the Hague Court illusory? Is it destined to receive the condemnation of the nations, or to die of neglect and non-use? I hope not. I think not. The delegates to that great assembly were practical men. They did not even con-

demn war as wholly unrighteous. They did not attempt the impossible. They recognized their work as imperfect, but it was the best then attainable. I have pointed out some of the defects of the arbitration convention, and have suggested amendments which are possible of attainment at no distant day. I think it should be the policy of the friends of universal peace to labor to perfect that instrument, and to make the Hague Court popular with the nations as an effective means of adjusting international differences.

A permanent world's parliament of states is a long way off, and while it is a worthy ideal, its advocates should not decry the Hague Court, or do anything to lessen the confidence of the nations in its utility. The Conference, as has already been noted, contemplated a similar assembly in the near future to amend the arbitration convention, and to consider the exemption of private property on the high sea in time of

war, a measure urged upon that body by the delegates from the United States. Other matters of international moment are pressing for settlement.

The Interparliamentary Union, at its session in St. Louis in September, 1904, adopted a resolution asking the President of the United States to call a second Peace Conference of the nations of the world.[1] Similar action was taken by the International Congress of Lawyers and Jurists, held at St. Louis the same month, and a week later by the International Peace Congress at Boston. President Roosevelt has responded favorably to the request coming from such distinguished bodies of representatives from all countries, and the first step towards the issuance of a call has been taken in a circular letter from the Department of State, asking the views of the several governments as to the time of the convocation of such a conference, and an

[1] See Appendix E, for the full text of the resolutions.

indication as to their willingness to participate in it. The present war between Russia and Japan may postpone the assembling of the Conference, but we may confidently look for its meeting at no distant day. In anticipation of that event, it behooves the friends of arbitration throughout the world to influence their respective governments to make still more effective the Hague Court.

It is the comment of those who have studied the deliberations of the last Conference and the action of the nations on the subject of arbitration, that the governments have been in advance of the public sentiment in this matter. The unthinking mass of mankind are fond of military display, and take a deep interest in the conflict of armies. The patriotic spirit rejoices in the achievements of the military heroes and the triumphs of its country in the field of arms. Said a Senator of the United States, an accomplished statesman and an

able lawyer, to me recently, "There is no popular demand in this country for these arbitration treaties; the sentiment on the subject is mainly manufactured."

We might point the Senator to the frequent conferences which have been held in Washington, and annually at Mohonk, embracing representatives of all classes of society in the United States, and notably to the utterances of the Interparliamentary Union, the Congress of Jurists at St. Louis, and the Peace Congress at Boston. But his statement challenges the friends of peace in this country to manifest still further their devotion to the cause. When the arbitration treaties negotiated by Secretary Hay are transmitted by the President to the Senate, it should be made clear to that body that the great mass of the people of the United States are in hearty sympathy with the Executive department of the Government in this matter.

The members of the Mohonk Arbitra-

tion Conference, who for years have been laboring for the action taken by the Government, should be active in making their sentiments known to their representatives in the Senate. Chambers of commerce and business organizations, which have already so generally declared in favor of international arbitration, should again raise their potential voices in its favor. The labor organizations, whose members have to bear in large measure the sacrifice of life which war entails, are most deeply interested in peace. The clergy and all the other professions of education and intelligence owe it to their country to throw their weighty influence in favor of this beneficent measure. No class of society can do more to bring about a public sentiment in support of arbitration than the lawyers of the country. Happily, they have in their National and State associations made their views known in unmistakable terms. I again cite the action of the New York State

Bar Association. After full discussion of the subject and its careful study by a committee of its most prominent members, a plan for a permanent international arbitration court was drawn up, and a committee of that body made the journey to Washington to lay it before the President and ask for it the careful attention of the Government. That plan became the basis of the instructions of the American delegates to the Hague Conference, and the essential features of the Permanent Court now in existence at The Hague are in accordance with that plan. The same Association will doubtless throw its influence in favor of the pending arbitration treaties.

Notwithstanding the fierce conflict which is raging in the Far East, there is a cheerful outlook for international arbitration. Neither should the august initiator of the Hague Conference be too severely censured for inconsistency. Unconditional arbitration was not contemplated by him, and

many a humane ruler before his day has been unwillingly involved in hostilities. Instances of the avoidance of war are increasing in our time. The normal condition of the world now is peace, and for that the rulers of the nations constantly strive. The recent treaty between Great Britain and France, adjusting all outstanding matters of difference between these two ancient and once inveterate enemies, is a hopeful augury for the future conduct of states. A notable example of the spirit of this latter day is the action of the two most southern republics of this hemisphere, in uniting in a treaty of peace and unconditional arbitration, whereby their armies are disbanded and their navies reduced by the sale of a number of their battleships and the transformation of cruisers into vessels of commerce. To crown this noble work, Argentina and Chile have done well to erect on the highest peak of the Andes which marks their international boundary, long a sub-

ject of angry controversy, a statue of the Christ, the Prince of Peace.

A fresh propaganda for arbitration has opened in Europe, in which the statesmen and jurists of France take the lead. King Edward VII is exerting his mighty influence among the Great Powers in the same direction. The President of the United States, on all proper occasions, raises his voice and shapes the conduct of his Government in favor of international arbitration. We know too sadly, by the daily intelligence from the East, that universal peace has not yet come, but we may fondly hope that the era of Alexander, Cæsar, and Napoleon has passed never to return; that the ambition of rulers and the rivalry of nations may henceforth lie in the paths of education, industry, and commerce; and that the Hague Court will long stand as a beacon light in the tempestuous sea of international politics, and its influence and efficiency grow with the advancing years.

APPENDIX

A

THE HAGUE ARBITRATION CONVENTION

CONVENTION FOR THE PEACEFUL SETTLEMENT OF INTERNATIONAL DIFFERENCES, 1899

HIS Majesty the German Emperor, King of Prussia; His Majesty the Emperor of Austria, King of Bohemia, etc., and Apostolic King of Hungary; His Majesty the King of the Belgians; His Majesty the Emperor of China; His Majesty the King of Denmark; His Majesty the King of Spain, and in his name Her Majesty the Queen-Regent of the Kingdom; the President of the United States of America; the President of the United States of Mexico; the President of the French Republic; Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of India; His Majesty the King of the Hellenes; His Majesty the King of Italy; His Majesty the Emperor of Japan; His Royal Highness the Grand Duke of Luxemburg, Duke of Nassau; His Highness the Prince of Mon-

tenegro; Her Majesty the Queen of the Netherlands; His Imperial Majesty the Shah of Persia; His Majesty the King of Portugal and the Algarves; His Majesty the King of Roumania; His Majesty the Emperor of All the Russias; His Majesty the King of Servia; His Majesty the King of Siam; His Majesty the King of Sweden and Norway; The Swiss Federal Council; His Majesty the Emperor of the Ottomans; and his Royal Highness the Prince of Bulgaria:

Animated by a strong desire to concert for the maintenance of the general peace;

Resolved to second by their best efforts the friendly settlement of international disputes;

Recognizing the solidarity which unites the members of the society of civilized nations;

Desirous of extending the empire of law, and of strengthening the appreciation of international justice;

Convinced that the permanent institution of a Court of Arbitration, accessible to all, in the midst of the independent Powers, will contribute effectively to this result;

Having regard to the advantages attending the general and regular organization of arbitral procedure;

APPENDIX

Sharing the opinion of the august Initiator of the International Peace Conference that it is expedient to solemnly establish, by an international Agreement, the principles of equity and right on which repose the security of States and the welfare of peoples;

Being desirous of concluding a convention to this effect, have appointed as their Plenipotentiaries, to wit: —

(Names.)

Who, after communication of their full powers, found in good and due form, have agreed on the following provisions: —

TITLE I. — *On the Maintenance of General Peace.*

ARTICLE I. With a view to obviating, as far as possible, recourse to force in the relations between States, the Signatory Powers agree to use their best efforts to insure the pacific settlement of international differences.

TITLE II. — *On Good Offices and Mediation.*

ARTICLE II. In case of serious disagreement or conflict, before an appeal to arms, the Signatory Powers agree to have recourse, as far as circum-

stances allow, to the good offices or mediation of one or more friendly Powers.

ARTICLE III. Independently of this recourse, the Signatory Powers consider it useful that one or more Powers, strangers to the dispute, should on their own initiative, and as far as circumstances will allow, offer their good offices or mediation to the States at variance.

The right to offer good offices or mediation belongs to Powers who are strangers to the dispute, even during the course of hostilities.

The exercise of this right shall never be regarded by one or the other of the parties to the contest as an unfriendly act.

ARTICLE IV. The part of the mediator consists in reconciling the opposing claims and in appeasing the feelings of resentment which may have arisen between the States at variance.

ARTICLE V. The functions of the mediator are at an end when once it is declared, either by one of the parties to the dispute or by the mediating Power itself, that the methods of conciliation proposed by it are not accepted.

ARTICLE VI. Good offices and mediation, whether at the request of the parties at variance or upon the

initiative of Powers who are strangers to the dispute, have exclusively the character of advice, and never have binding force.

Article VII. The acceptance of mediation cannot, unless there be an agreement to the contrary, have the effect of interrupting, delaying, or hindering mobilization or other measures of preparation for war.

If mediation occurs after the commencement of hostilities, it causes no interruption to the military operations in progress, unless there be an agreement to the contrary.

Article VIII. The Signatory Powers are agreed in recommending the application, when circumstances allow, of special mediation in the following form: —

In the case of a serious difference endangering the peace, the States at variance shall each choose a Power, to whom they intrust the mission of entering into direct communication with the Power chosen on the other side, with the object of preventing the rupture of pacific relations.

During the period of this mandate, the term of which, unless otherwise stipulated, cannot exceed thirty days, the States in conflict shall cease from all

direct communication on the subject of the dispute, which is regarded as having been referred exclusively to the mediating Powers, who shall use their best efforts to settle the controversy.

In case of a definite rupture of pacific relations, these Powers remain charged with the joint duty of taking advantage of every opportunity to restore peace.

TITLE III. — *On International Commissions of Inquiry.*

ARTICLE IX. In differences of an international nature involving neither honor nor vital interests, and arising from a difference of opinion on matter of fact, the Signatory Powers recommend that parties who have not been able to come to an agreement by diplomatic methods should, as far as circumstances allow, institute an International Commission of Inquiry, to facilitate a solution of the differences by elucidating the facts by means of an impartial and conscientious investigation.

ARTICLE X. International Commissions of Inquiry shall be constituted by a special agreement between the parties to the controversy. The agreement for the inquiry shall specify the facts to be

examined and the extent of the powers of the commissioners. It shall fix the procedure. Upon the inquiry both sides shall be heard. The procedure to be observed, if not provided for in the Convention of Inquiry, shall be fixed by the Commission.

ARTICLE XI. The International Commissions of Inquiry shall be formed, unless otherwise stipulated, in the manner fixed by Article XXXII of the present Convention.

ARTICLE XII. The Powers in dispute agree to supply the International Commission of Inquiry, as fully as they may consider it possible, with all means and facilities necessary to enable it to arrive at a complete acquaintance and correct understanding of the facts in question.

ARTICLE XIII. The International Commission of Inquiry shall present to the parties in dispute its report signed by all the members of the Commission.

ARTICLE XIV. The report of the International Commission of Inquiry shall be limited to a statement of the facts, and shall in no way have the character of an arbitral award. It leaves the Powers in controversy freedom as to the effect to be given to such statement.

APPENDIX

Title IV. — *On International Arbitration.*

Chapter I. — *On Arbitral Justice.*

Article XV. International arbitration has for its object the determination of controversies between States by judges of their own choice, upon the basis of respect for law.

Article XVI. In questions of a judicial character, and especially in questions regarding the interpretation or application of international treaties or conventions, arbitration is recognized by the Signatory Powers as the most efficacious and at the same time the most equitable method of deciding controversies which have not been settled by diplomatic methods.

Article XVII. An agreement of arbitration may be made with reference to disputes already existing or those which may hereafter arise. It may relate to every kind of controversy or solely to controversies of a particular character.

Article XVIII. The agreement of arbitration implies the obligation to submit in good faith to the decision of the arbitral tribunal.

Article XIX. Independently of existing general or special treaties imposing the obligation to have

recourse to arbitration on the part of any of the Signatory Powers, these Powers reserve to themselves the right to conclude, either before the ratification of the present Convention, or subsequent to that date, new agreements, general or special, with a view of extending the obligation to submit controversies to arbitration, to all cases which they consider suitable for such submission.

CHAPTER II. — *On the Permanent Court of Arbitration.*

ARTICLE XX. With the object of facilitating an immediate recourse to arbitration for international differences which could not be settled by diplomatic methods, the Signatory Powers undertake to organize a permanent Court of Arbitration accessible at all times, and acting, unless otherwise stipulated by the parties, in accordance with the rules of procedure included in the present Convention.

ARTICLE XXI. The permanent Court shall have jurisdiction of all cases of arbitration, unless there shall be an agreement between the parties for the establishment of a special tribunal.

ARTICLE XXII. An International Bureau shall be established at The Hague, and shall serve as the

record office for the Court. This Bureau shall be the medium of all communications relating to the Court. It shall have the custody of the archives, and shall conduct all the administrative business. The Signatory Powers agree to furnish the Bureau at The Hague with a certified copy of every agreement of arbitration arrived at between them, and of any award therein rendered by a special tribunal. They also undertake to furnish the Bureau with the laws, rules, and documents, eventually declaring the execution of the judgments rendered by the Court.

Article XXIII. Within three months following the ratification of the present act, each Signatory Power shall select not more than four persons, of recognized competence in questions of international law, enjoying the highest moral reputation, and disposed to accept the duties of arbitrators. The persons thus selected shall be enrolled as members of the Court, upon a list which shall be communicated by the Bureau to all the Signatory Powers. Any alteration in the list of arbitrators shall be brought to the knowledge of the Signatory Powers by the Bureau. Two or more Powers may unite in the selection of one or more members of the Court. The same person may be selected by different powers.

The members of the Court shall be appointed for a term of six years, and their appointment may be renewed. In case of the death or resignation of a member of the Court, his place shall be filled in accordance with the method of his appointment.

ARTICLE XXIV. Whenever the Signatory Powers wish to have recourse to the permanent Court for the settlement of a difference that has arisen between them, the arbitrators selected to constitute the Tribunal which shall have jurisdiction to determine such difference shall be chosen from the general list of members of the Court. If such arbitral Tribunal be not constituted by the special agreement of the parties, it shall be formed in the following manner: Each party shall name two arbitrators, and these together shall choose an umpire. If the votes shall be equal, the choice of the umpire shall be intrusted to a third Power selected by the parties by common accord. If an agreement is not arrived at on this subject, each party shall select a different Power, and the choice of the umpire shall be made by the united action of the Powers thus selected. The Tribunal being thus constituted, the parties shall communicate to the Bureau their decision to have recourse to the Court, and the names of the arbitrators. The

Tribunal of Arbitration shall meet at the time fixed by the parties. The members of the Court, in the discharge of their duties, and outside of their own country, shall enjoy diplomatic privileges and immunities.

Article XXV. The Court of Arbitration shall ordinarily sit at The Hague. Except in cases of necessity, the place of session shall be changed by the Court only with the assent of the parties.

Article XXVI. The International Bureau at The Hague is authorized to put its offices and its staff at the disposal of the Signatory Powers, for the performance of the duties of any special tribunal of arbitration. The jurisdiction of the permanent Court may be extended, under conditions prescribed by its rules, to controversies existing between Non-signatory Powers, or between Signatory Powers and Non-signatory Powers, if the parties agree to submit to its jurisdiction.

Article XXVII. The Signatory Powers consider it their duty, in case a serious dispute threatens to break out between two or more of them, to remind these latter that the permanent Court of Arbitration is open to them. Consequently, they declare that the fact of reminding the parties in controversy of the

provisions of the present Convention, and the advice given to them, in the higher interests of peace, to have recourse to the permanent Court, can only be considered as an exercise of good offices.

Article XXVIII. A permanent administrative Council composed of the diplomatic representatives of the Signatory Powers accredited to The Hague, and of the Netherlands Minister of Foreign Affairs, who shall act as President, shall be constituted in that city as soon as possible after the ratification of the present Act by at least nine Powers. This Council shall be charged with the establishment and organization of the International Bureau, which shall remain under its direction and control. It shall notify the Powers of the constitution of the Court and provide for its installation. It shall make its own by-laws, and all other necessary regulations. It shall decide all questions of administration which may arise with regard to the operations of the Court. It shall have entire control over the appointment, suspension, or dismissal of officials and employees of the Bureau. It shall determine their allowances and salaries, and control the general expenditure. At meetings duly summoned five members shall constitute a quorum. All decisions shall be made by a

majority of votes. The Council shall communicate to each Signatory Power without delay the by-laws and regulations adopted by it. It shall furnish them with a signed report of the proceedings of the Court, the working of the administration, and the expenses.

Article XXIX. The expense of the Bureau shall be borne by the Signatory Powers in the proportion established for the International Bureau of the International Postal Union.

Chapter III. — *On Arbitral Procedure.*

Article XXX. With a view to encouraging the development of arbitration, the Signatory Powers have agreed on the following rules, which shall be applicable to the arbitral procedure, unless the parties have agreed upon different regulations.

Article XXXI. The Powers which resort to arbitration shall sign a special act (*compromis*), in which the subject of the difference shall be precisely defined, as well as the extent of the powers of the arbitrators. This act implies an agreement by each party to submit in good faith to the award.

Article XXXII. The duties of arbitrator may be conferred upon one arbitrator alone, or upon several arbitrators selected by the parties, as they please, or

chosen by them from the members of the permanent Court of Arbitration established by the present act. Failing the constitution of the Tribunal by direct agreement between the parties, it shall be formed in the following manner: —

Each party shall appoint two arbitrators, and these shall together choose an umpire. In case of an equal division of votes the choice of the umpire shall be intrusted to a third Power to be selected by the parties by common accord. If no agreement is arrived at on this point, each party shall select a different Power, and the choice of the umpire shall be made by agreement between the Powers thus selected.

Article XXXIII. When a Sovereign or Chief of State shall be chosen for an arbitrator, the arbitral procedure shall be determined by him.

Article XXXIV. The umpire shall preside over the Tribunal. When the Tribunal does not include an umpire, it shall appoint its own presiding officer.

Article XXXV. In case of the death, resignation, or absence for any cause, of one of the arbitrators, the place shall be filled in the manner provided for his appointment.

Article XXXVI. The parties shall designate the place where the Tribunal is to sit. Failing such a designation, the Tribunal shall sit at The Hague. The place of session thus determined shall not, except in the case of overwhelming necessity, be changed by the Tribunal without the consent of the parties.

Article XXXVII. The parties shall have the right to appoint agents or attorneys to represent them before the Tribunal, and to serve as intermediaries between them and it.

They are also authorized to employ for the defence of their rights and interests before the Tribunal counsellors or solicitors named by them for that purpose.

Article XXXVIII. The Tribunal shall decide upon the choice of languages used by itself or to be authorized for use before it.

Article XXXIX. As a general rule, the arbitral procedure shall comprise two distinct phases, — preliminary examination and discussion. Preliminary examination shall consist in the communication by the respective agents to the members of the Tribunal and to the opposite party, of all printed or written acts, and of all documents containing the

arguments to be invoked in the case. This communication shall be made in the form and within the period fixed by the Tribunal, in accordance with Article XLIX.

The discussion shall consist in the oral development before the Tribunal of the argument of the parties.

ARTICLE XL. Every document produced by one party must be communicated to the other party.

ARTICLE XLI. The discussions shall be under the direction of the President. They shall be public only in case it shall be so decided by the Tribunal, with the assent of the parties. They shall be recorded in the official minutes drawn up by the Secretaries appointed by the President. These official minutes alone shall have an authentic character.

ARTICLE XLII. When the preliminary examination is concluded, the Tribunal may refuse admission of all new acts or documents, which one party may desire to submit to it, without the consent of the other party.

ARTICLE XLIII. The Tribunal may take into consideration such new acts or documents to which its attention may be drawn by the agents or counsel of the parties. In this case the Tribunal shall have

the right to require the production of these acts or documents, but it is obliged to make them known to the opposite party.

Article XLIV. The Tribunal may also require from the agents of the party the production of all papers, and may demand all necessary explanations. In the case of refusal, the Tribunal shall take note of the fact.

Article XLV. The agent and counsel of the parties are authorized to present orally to the Tribunal all the arguments which they may think expedient in support of their cause.

Article XLVI. They shall have the right to raise objections and to make incidental motions. The decisions of the Tribunal on these points shall be final, and shall not form the subject of any subsequent discussion.

Article XLVII. The members of the Tribunal shall have the right to put questions to the agents or counsel of the parties and to demand explanations from them on doubtful points. Neither the questions put nor the remarks made by members of the Tribunal during the discussion or argument shall be regarded as an expression of opinion by the Tribunal in general, or by its members in particular.

ARTICLE XLVIII. The Tribunal is authorized to determine its own jurisdiction, by interpreting the agreement of arbitration or other treaties which may be quoted in point and by the application of the principles of international law.

ARTICLE XLIX. The Tribunal shall have the right to make rules of procedure for the direction of the trial to determine the form and the periods in which parties must conclude the argument, and to prescribe all the formalities regulating the admission of evidence.

ARTICLE L. The agents and the counsel of the parties having presented all the arguments and evidence in support of their case, the President shall declare the hearing closed.

ARTICLE LI. The deliberations of the Tribunal shall take place with closed doors. Every decision shall be made by a majority of the members of the Tribunal. The refusal of any member to vote shall be noted in the official minutes.

ARTICLE LII. The award shall be made by a majority of votes, and shall be accompanied by a statement of the reasons upon which it is based. It must be drawn up in writing and signed by each of the members of the Tribunal. Those members

who are in the minority may, in signing, state their dissent.

ARTICLE LIII. The award shall be read in a public sitting of the Tribunal, the agents and counsel of the litigants being present or having been duly summoned.

ARTICLE LIV. The award duly pronounced and notified to the agents of the parties in litigation shall decide the dispute finally and without appeal.

ARTICLE LV. The parties may reserve in the agreement of arbitration the right to demand a rehearing of the case. In this case, and in the absence of any stipulation to the contrary, the demand shall be addressed to the Tribunal which has pronounced the judgment; but it shall be based only on the discovery of new facts, of such a character as to exercise a decisive influence upon the judgment, and which at the time of the judgment were unknown to the Tribunal itself and to the parties demanding the rehearing. The proceedings for a rehearing can only be begun by a decision of the Tribunal stating expressly the existence of the new fact and recognizing that it possesses the character described in the preceding paragraph, and declaring that the demand is admissible on that ground. The agreement of arbi-

tration shall determine the time within which the demand for a rehearing shall be made.

ARTICLE LVI. The award shall be obligatory only upon the parties who have concluded the arbitration agreement. When there is a question of the interpretation of an agreement entered into by other Powers besides the parties in litigation, the parties to the dispute shall notify the other Powers which have signed the agreement, of the special agreement which they have concluded. Each one of these Powers shall have the right to take part in the proceedings. If one or more among them avail themselves of this permission, the interpretation in the judgment becomes obligatory upon them also.

ARTICLE LVII. Each party shall bear its own expenses and an equal part of the expenses of the Tribunal.

GENERAL PROVISIONS

ARTICLE LVIII. The present Convention shall be ratified with as little delay as possible. The ratifications shall be deposited at The Hague. An official report of each ratification shall be made, a certified copy of which shall be sent through diplomatic chan-

nels to all the Powers represented in the Peace Conference at The Hague.

Article LIX. The Powers which were represented at the International Peace Conference, but which have not signed this Convention, may become parties to it. For this purpose they will make known to the Contracting Powers their adherence by means of a written notification addressed to all the other Contracting Powers.

Article LX. The conditions under which Powers not represented in the International Peace Conference may become adherents to the present Convention shall be determined hereafter by agreement between the Contracting Powers.

Article LXI. If one of the High Contracting Parties shall give notice of a determination to withdraw from the present Convention, this notification shall have its effect only after it has been made in writing to the Government of the Netherlands and communicated by it immediately to all the other Contracting Powers. This notification shall have no effect except for the Power which has made it.

In faith of which the Plenipotentiaries have signed the present Convention and affixed their seals to it.

Done at The Hague, the 29th July, 1899, in a single copy, which shall remain in the archives of the Netherlands Government, and copies of it, duly certified, be sent through the diplomatic channel to the Contracting Powers.

(Signatures.)

B

ANGLO-FRENCH TREATY OF 1903

Translation

THE Government of the French Republic, and the Government of H. B. Majesty, signatories of the Convention for the pacific settlement of International disputes, concluded at The Hague, July 29, 1899,

Considering that by Article 19 of this Convention, the High Contracting Parties reserved to themselves the conclusion of agreements in view of recourse to arbitration in all cases which they judged capable of submission to it,

Have authorized the undersigned to agree as follows: —

ARTICLE I. Differences of a judicial order, or relative to the interpretation of existing treaties between the two Contracting Parties, which may rise, and which it may not have been possible to settle by diplomacy, shall be submitted to the Permanent Court of Arbitration established by the

Convention of July 29, 1899, at The Hague, on condition, however, that neither the vital interests, nor the independence or honour of the two Contracting States, nor the interests of any State other than the two Contracting States, are involved.

ARTICLE II. In each particular case the High Contracting Parties, before addressing themselves to the Permanent Court of Arbitration, shall sign a special undertaking determining clearly the subject of dispute, the extent of the Arbitral powers, and the details to be observed in the constitution of the Arbitral Tribunal and the procedure.

ARTICLE III. The present arrangement is concluded for a duration of five years from the date of signature.

CAMBON,
LANSDOWNE.

LONDON, October 14, 1903.

C

THE NETHERLANDS–DENMARK TREATY OF 1904

Translation

HER Majesty the Queen of the Netherlands and His Majesty the King of Denmark, moved by the principles of the Convention for the peaceable settlement of International Disputes, concluded at The Hague on the 29th of July, 1899, and desiring to establish especially in all reciprocal relations the principle of obligatory arbitration by a general agreement in accord with Article 19 of the said treaty, have resolved to enter into a treaty to that end, and have appointed their plenipotentiaries, to wit: —

Her Majesty the Queen of the Netherlands:

Mr. Jacob Dirk Carel Baron van Heeckeren van Kell, Her Majesty's Envoy Extraordinary and Minister Plenipotentiary near to His Majesty the King of Denmark, Knight of the Order of the Netherlands Lion:

His Majesty the King of Denmark:

Mr. John Henrik Deuntzer, Chairman of the Cabinet Council and Minister of Foreign Affairs, Grand Cross of the Danebrog Order and bearer of the honorary cross of the same order, etc., etc., who, having exchanged their powers plenipotentiary, which were found to be in proper order, have agreed to the following provisions: —

Article I. The High Contracting Powers undertake to submit to the Permanent Court of Arbitration all mutual differences and disputes that cannot be solved by means of a diplomatic channel.

Article II. In every case the High Contracting Powers, prior to submitting the case to the Permanent Court of Arbitration, shall sign a special agreement, clearly describing the subject of the litigation, the extent of the powers of the arbitrators, and the time which shall be observed in regard to the composition of the Arbitral Tribunal and the procedure.

Article III. That it be understood that Article I does not apply to disputes between subjects of any of the contracting States and those of the other contracting State, to the adjudicating of which the

courts of justice of the last mentioned State are empowered according to its own laws.

ARTICLE IV. States, non-signatory to this treaty, shall be allowed to adhere to the same. The State desirous of adhering shall notify each of the contracting States in writing of its intention.

Adhesion shall follow from the day on which the adhering State shall advise that each of these States has notified it of the receipt of its intimation.

ARTICLE V. In case one of the contracting States should withdraw from this treaty, such withdrawal shall only take place one year after the notice thereof is given in writing to each of the other contracting States.

ARTICLE VI. This treaty shall be ratified as soon as possible, and the exchange of the acts of ratification take place at The Hague.

In witness whereof the respective plenipotentiaries have hereto set their hands and affixed their seals.

COPENHAGEN, the 12th of February, 1904.

(Signed) CAREL VAN HEECKEREN.

(Signed) DEUNTZER.

D

EXTRACT FROM TREATY BETWEEN MEXICO AND SPAIN OF 1902

Translation

ARTICLE I. The high contracting parties agree to submit to the decision of arbitrators all controversies which may arise between them during the existence of the present treaty in which they might not have been able to reach an amicable solution by direct negotiation; provided that said controversies affect neither the national independence nor honor.

ARTICLE II. Neither the national independence nor honor shall be considered to be compromised in the following cases: —

A. When treating of pecuniary damages and prejudices suffered by one of the contracting states or by its citizens because of illegal acts or omissions on the part of the other contracting state or its citizens.

B. When treating of the interpretation of the treaties, agreements, and conventions relating to the

protection of ownership of artistic, literary, and industrial property, as well as to that of privileges, patents of inventions, trade-marks, mercantile firms, money, weights and measures, and sanitary precautions, either veterinary or to exclude phylloxera.

C. When treating of the application of treaties, agreements, and conventions relating to successions, aid, and judicial correspondence.

D. When treating of treaties, agreements, and conventions now in force, or which may be celebrated hereafter, with the object of putting the principles of public or private international law, either civil or penal, into practice.

E. When treating of questions which relate to the interpretation or execution of treaties, agreements, and conventions of friendship, commerce, and navigation.

E

RESOLUTION

OF THE

INTERPARLIAMENTARY UNION

HELD AT ST. LOUIS, SEPTEMBER, 1904

WHEREAS, Enlightened public opinion and the spirit of modern civilization alike demand that differences between nations should be adjudicated and settled in the same manner as disputes between individuals are adjudicated — namely, by the arbitrament of courts in accordance with recognized principles of law;

The Conference requests the several governments of the world to send representatives to an international conference, to be held at a time and place to be agreed upon by them for the purpose of considering:

First, the questions for the consideration of which the Conference at The Hague expressed a wish that a future conference be called;

Second, the negotiation of arbitration treaties

between the nations represented at the Conference to be convened;

Third, the advisability of establishing an International Congress to convene periodically for the discussion of international questions.

And this Conference respectfully and cordially requests the President of the United States to invite all the nations to send representatives to such a conference.

F

HON. T. E. BURTON'S SPEECH

ON

THE NAVAL APPROPRIATION BILL[1]

THE CHAIRMAN. The gentleman from Ohio is recognized.

MR. BURTON. Mr. Chairman, I am opposed to the naval program exemplified by this bill. I oppose it because I believe it involves a departure from the fundamental principles and policies which are alike the bulwark and the honor of this Republic.

It involves great extravagance; but that is, after all, a minor consideration. We can in no way illustrate the growth of our naval establishment so well as by referring to certain figures.

In the years 1886 and 1887 there was expended for the Navy respectively $13,907,000 and $15,141,000. The expenditures for the year 1903 were $82,000,000. The present bill carries a total of $96,000,000, almost

[1] From the Congressional Record, February 22, 1904, 58th Congress, 2d Session, Vol. 38, pp. 2293–5.

seven times as great an amount as that expended in 1886, and more than six times as great as the amount expended in 1887. What is the need of this great Navy? What nation on earth is attacking us or threatening us? . . .

The fact is, we do not need a great navy unless there is a combination of all European powers against the United States, and what is more unlikely! If there were a combination of all these powers, we could not provide a navy which could cope with them without such a change in political, social, and economic conditions as would be absolutely appalling to us. Indeed, we could not build a navy greater and stronger than that of Great Britain alone without changing the whole framework of society in this country. . . .

What is the reason, then, for this great expenditure of $96,000,000, an amount approaching the total that is expended for the strictly civil side of the Government, bearing in mind that the Post-Office is nearly self-sustaining? It means that we are inviting the nations of the earth to attack us. It means that we are declaring to the world that we are going to enter into a field entirely different from that which we have occupied in the past; that we are striving to

dominate political affairs in other portions of the earth. Is anybody afraid of the Monroe Doctrine? In ten years we have had instances enough to show that the Doctrine is admitted by all nations to be an established fact in the diplomatic policy of the world. It has been strained at times, in the opinion of some of us, without awakening any opposition whatever, so there is no cloud over it. Our supremacy in this hemisphere is admitted, and that supremacy will rest upon the strongest foundation while it is exercised in justice and with the desire to promote honesty and good faith between these republics and all the nations of the earth. [Applause.] . . .

I understand one gentleman of this House, speaking a few days ago, said that Germany would soon attack us. What hobgoblin disturbed him in his dreams? [Laughter.] There is just about as much chance of war with Germany as that by some great cataclysm part of the Eastern Hemisphere will slip over here, so that one of her capes will abut against our country. The nations of Europe respect us; they honor us, and, so far as fear is salutary, they fear us. We have an economic advantage as compared with any part of the whole world. They know

that in war our friendship is necessary. War is not a matter alone of battleships, nor of men and cannon, but of resources and staying qualities, of ability to provide for the strain and distress of a great struggle. What nation of Europe, if it were engaged in war, would desire to lose our friendship and good-will?

There is another very important phase of this question. The tendency of the present time is toward peace. The situation is now such in the Old World that no country can go to war without grave reason, at least without incurring the condemnation of the rest. Since 1815, during which time, as it would seem, the world has grown in inventions and in the improvements which come with civilization more than in all the centuries before, the nations of Europe have tried to maintain peace and amity, because they knew that war, with its devastation and bloodshed, brings unhappiness and calamity to all the nations of the earth.

So the nations are warned they must not go to war unless they have the most weighty reasons. Now, here is our country, one which should most of all set an example which shall look toward a better day of peace and amity, that is spending six times as much for its Navy as it did seventeen years ago. We have

nothing to do with their rivalries and quarrels. Almost as much as by our republican institutions and the push and energy of the American citizen we have gained our present standing among the nations of the earth by our splendid isolation. We are remote from wars and conflicts. Shall we declare to the nations of the earth that we will depart from these old policies; that new ambitions inspire and actuate us? Shall our battleships line up with the battleships of the countries which for centuries have been maintaining an extensive and depressing military establishment?

If so, the indication does not look toward peace; it looks toward war, and we will be taking a backward step. "My art, it was but justice," were the words the dramatist put in the mouth of Cardinal Richelieu. Our art and our glory, they are but justice. [Applause.] And if we stand for the triumphs of just diplomacy rather than by those of cannon and guns, we will gain the respect of the world. Oh, but, some one says, it needs war to bestir and maintain our manhood. There are enough opportunities for heroism in this world, with its tragedies and difficulties, without war. I have listened here sometimes to men who fomented conflict by

their utterances. I have wished there was a rule in this House that when a man talked in favor of war, it should be settled that in case war ensued he must stand in the most conspicuous place on the firing line for at least the length of time he consumed in his speech. [Applause.]

"They are the men behind the guns," says one of our humorists; "yes, 4000 miles behind the gun and willing to be farther." [Applause.] We cannot afford as a country to allow our example to be exerted in the direction of war and great military establishments. It is not alone the first expense, which will increase far more than we can realize, but we must consider that probably for every dollar invested in a battleship, in a short space of years ten dollars will be required for the maintenance and equipment of the ambitious naval establishment which is projected. You must have dry docks and you must have naval stations; you must have coaling stations and colliers, with all the incidents which belong to a great navy. Nearly one hundred millions will be expended now and far more in the early future. But far more important than the expenditure of money is the threatening prospect for the future which this policy affords.

I wish that the words of him whose birthday we celebrate to-day could be heard again. His heart was always for peace. He was ready to fight and to die for his country, but he left in his Farewell Address that which is a priceless heritage, the injunction to cultivate and maintain peace and good-will with all nations. [Applause on the Democratic side.] He set forth principles which will be immortal because they are immortally right. I wish I could with some degree of force so much as whisper in the ears of men those words of William McKinley: —

"Let us ever remember that our interest is in concord, not conflict; that our true glory rests in the triumphs of peace, not those of war."

Oh, but it is said, "This is merely a defensive measure; the best way to secure peace is to be ready for war, and so build up a great navy." How similar to that are the words of Uriah Heep when he said, "We know that we are humble, but we are afraid that other people that are not humble will get the start of us." The best way to secure peace is to promote every means for an amicable settlement of national controversies by an international tribunal like the courts which render judgments between individ-

uals, so that its judgments may be sanctioned and enforced. The strongest sanction that can be given as the years will go by, a force as strong as a despotism for the enforcements of its decrees, will be that of public opinion, which is the controlling force in our own country at this day.

Every step that you take to build other battleships and to increase the Navy is another influence against settling disputes in this way. Is there no voice to be raised among us in favor of making advancement in settling the world's controversies in an amicable manner? Are we to go even ahead of the other nations in our naval program? I want to call attention to this report to show that in comparison with us France and Germany and other powers are abating in their efforts for a greater navy. It is the United States that is going ahead with the greatest rapidity; it is the United States that is saying, in effect, if not in words, we are to be ready for war, which means that we invite war. . . .

One gentleman, as I understand, opposed this bill because the material for the Navy was made by the trusts. That shows how, when a man gets a fad in his mind, he will go astray. You will never attack the naval program with any such popgun as that

— by saying that the material that belongs in the ships is made by a trust. There is a broader and higher ground, and that is its effects upon the future of this great nation, upon civilization here and everywhere. Shall our statesmanship with its aspirations, its forecast of the future, look toward peace and amity and good-will, or shall it look toward the bloody days of war? For one I want to say that I am unable to vote for a bill that carries so large an amount as this. I am unable to vote for a bill that declares that the United States, which should be the herald of peace, the leader in all great movements of civilization, is going to double and treble and quadruple its Navy, all under the statement that we claim that it is in the interest of peace.

Gentlemen, you are not going to make the world think that it is in the interest of peace. I doubt whether, if you reflect upon it in your own inner consciousness, you believe that these battleships and cruisers and torpedo boats mean that. They mean, rather, the gratification of a desire that we shall enjoy the triumphs of war upon the land and the sea again. I would not detract from the glories of the American Navy. I believe it is an efficient naval force, one which, as ex-President Harrison

said, man for man, gun for gun, shall be the best in the world; but this bill means something very different from that. This is a program far more ambitious and emphatic. It seems to display a desire that the future policy of this country shall be one of conflict. [Applause.]

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